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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

CLIFFORD BAKER,

Defendant and Appellant.

B259735

(Los Angeles County
Super. Ct. No. BA423923)

APPEAL from a judgment of the Superior Court of Los Angeles County, David V. Harriford, Judge. Affirmed.

Linn Davis, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Clifford Baker was convicted, following a jury trial, of one count of possession for sale of phencyclidine in violation of Health and Safety Code section 11378.5 and one count of possession of a firearm by a felon in violation of Penal Code¹ section 29800, subdivision (a)(1). The jury found true the allegation that appellant was personally armed with a firearm during the possession for sale offense within the meaning of section 12022, subdivision (c). The jury found appellant not guilty of maintaining a place for narcotics sales in violation of Health and Safety Code section 11366. The trial court found true the allegations that appellant had served five prior prison terms within the meaning of section 667.5, subdivision (b).

The court sentenced appellant to a total term of 14 years in state prison, consisting of the high term of five years for the Health and Safety conviction, a three year enhancement term pursuant to Health and Safety Code section 11370.2, subdivision (b), a four-year enhancement term pursuant to section 12022, subdivision (c) and two, one-year enhancement terms pursuant to section 667.5 subdivision (b). The court struck the remaining section 667.5 convictions and imposed a concurrent three-year term for the section 29800 conviction. The court imposed a \$300 restitution fine pursuant to section 1202.4, subdivision (b), a stayed parole revocation fee of \$300, a \$50 lab fee pursuant to section 1202.5 for the narcotics conviction and a \$40 court operations assessment pursuant to section 1465.8, subdivision (a)(1) and a \$30 criminal conviction assessment pursuant to Government Code section 70373 for both the narcotics conviction and the firearm conviction. Appellant was awarded 34 days of actual presentence custody plus 34 days of conduct credit, for a total 68 days.

Appellant appeals from the judgment of conviction. Finding no error, we affirm.

FACTUAL BACKGROUND

Beginning in late December 2013, officers from the 77th Street Narcotic Detail conducted an investigation into possible narcotics sales on West 52nd Street near

¹ All further statutory references are to the Penal Code unless otherwise specified.

Budlong Avenue. Houses at 1315, 1233 and 1237 West 52nd Street were linked to narcotics sales via surveillance and undercover purchases of narcotics. The houses at 1233 and 1237 were adjacent to each other.

In January and February 2014, officers saw appellant enter or leave the house at 1315 on several occasions, including once or twice with two children. Officers also observed a burgundy Chevrolet Impala parked in the driveway of the 1315 house on numerous occasions. On the morning of February 12, 2014, as law enforcement officers prepared to serve search warrants on the three residences, Officer Gomez saw the burgundy Chevrolet Impala leave the 1315 house, but could not see who was driving.

Searches pursuant to the warrants uncovered five small bottles with PCP residue at the 1315 residence. Some small bottles with PCP residue, some small vials containing PCP and a pay and owe sheet were discovered at the 1233 house. The search of the 1237 house uncovered 20 small vials of PCP and one larger PCP vial on a credenza near the front door. The search also uncovered a small amount of rock cocaine and methamphetamine, a razor blade and a police scanner.

During the searches, Officer Langsdale noticed the burgundy Chevrolet Impala parked in front of the 1237 address, formed the opinion that the car had been used to re-supply the 1237 residence, and directed the car to be searched without a warrant. Inside the car, officers found car insurance papers dated 2011 in appellant's name and the 1315 address.² The search also uncovered a handgun on the front seat under a pillow, ammunition in a box in the back seat and 30.92 grams of PCP in large and small containers in the trunk. Officer Langsdale opined the PCP was possessed for purposes of sale.

Appellant was detained during the execution of the search warrants. Officer Gonzalez advised appellant of his *Miranda*³ rights and asked him if he knew anything

² The papers stated that the insurance was for a Caprice, but the Vehicle Identification Number matched the one on the burgundy Chevrolet Impala.

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

about a black handgun found in a dark-colored Chevrolet Impala. Appellant waived his rights and stated that he found the firearm in his home and put it in the car for safekeeping. Appellant told Officer Gonzalez that he was staying at 1315.

At trial, the prosecution's theory was that the three houses were a joint enterprise. To support this theory, the prosecution introduced evidence that the three houses were in territory claimed by the Nothing But Troubles gang, the gang was involved in drug sales, a gang member had been observed moving between the 1233 and 1237 houses, and the gang would not tolerate a competing narcotics operation on the same street. The prosecution's gang expert had no contact with appellant during his assignment as a gang officer.

PROCEDURAL BACKGROUND

Appellant's motion for discovery of the personnel records of Officer Gonzalez was granted, and discoverable records were found.

Appellant's motion to suppress evidence seized from the burgundy Chevrolet Impala was denied. The court found that police had probable cause to search the car. The court found it logical and reasonable to think the car was connected to the criminal activity in the three houses.

Appellant made a *Marsden*⁴ motion to relieve his attorney on September 22, 2014, near the end of the prosecution's case, but abandoned the motion after further discussion with his attorney. He made a second *Marsden* motion on October 15, 2014, at the beginning of his sentencing hearing. This motion was denied.

DISCUSSION

Appellant filed a timely notice of appeal, and we appointed counsel to represent him on appeal. Appellant's counsel filed an opening brief pursuant to *People v. Wende*

⁴ *People v. Marsden* (1970) 2 Cal.3d 118.

(1979) 25 Cal.3d 436, and requested this court to independently review the record on appeal to determine whether any arguable issues exist.

On May 5, 2015, we sent appellant a letter advising him that he had 30 days in which to file a supplemental brief. On June 22, 2015, appellant filed a notice of change of address. On August 13, 2015, we received a request from appellant for a 60 day extension of time to file a supplemental brief. We granted permission for the request to be filed, and extended the time for appellant to file his supplemental brief until September 1, 2015. Appellant did not file a supplemental brief by that date.

We have examined the entire record and are satisfied appellant's attorney has fully complied with her responsibilities and no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

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KIRSCHNER, J. *

We concur:

TURNER, P.J.

MOSK, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.